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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,724	07/01/2003	Gary F. Driscoll		6106
7590	03/30/2005		EXAMINER	
W. JOSEPH MELNIK PEPPER HAMILTON 500 GRANT STREET, 50TH FLOOR PITTSBURGH, PA 15219-2502				CHRISTMAN, KATHLEEN M
		ART UNIT		PAPER NUMBER
		3713		

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/611,724	DRISCOLL ET AL.
	<b>Examiner</b> Kathleen M Christman	<b>Art Unit</b> 3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 December 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-4 and 6-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 6-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-17-2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

In response to the amendment filed 12/17/2004 claims 1-4 and 6-11 are pending.

***Information Disclosure Statement***

1. The information disclosure statement filed 12/17/2004 fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e) or the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 1-4 and 6-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Richard et al (US 6149438). Richard et al teaching a method of distributing course materials, which include tests (col. 13:42 - col. 14:11), where the method includes the steps of: storing a first version of a test package in a data store (the course version stored in the central repository 104); establishing a communication link with a test center (the communication link between the local server and the central repository, the LAN 120);

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detecting via said communication link, that a second version of the test package installed at said test center is out dated relative to said first version of said test package (the test to see if the current version is installed on the local sever, col. 5: 4-5); as in **claim 1**. A database of **claim 3** is shown in figure 2. There is a server-client interface (**claim 4**) shown in at least Figure 11(a) and col. 6: 8-14. Regarding **claim 6**, the detecting act including receiving a test center record indicative of test packages installed at said test center, said test center record indicating the presence or absence of one or more versions of said test package at said test center is taught in col. 5: 2-5; and determining, based on said test center record, that said first version of said test package is not installed (col. 5: 5, the step of the course not being found). Prior to the act of transmitting determining, according to a criterion, that said first version of said test package may be installed at said test center, as in **claim 7**, is taught in col. 4: 66, where the criterion is if the user has access to the course. Regarding **claim 8**, the "isVersionAllowed" function which checks a version of software installed at said test center to determine whether an installation may proceed is taught in the functionality of col. 7: 12-18. This is shown in that the server must ensure that the version of the course the student is offered is the same as the one the student started taking the course with. As such the new version of the course will not be allowed on the server if the student needs a previous version. Regarding **claim 9**, updating a test center record at said test center to reflect installation of said first test version of said test package at said test center is shown in col. 5: 27,

Richard et al does not teach the use of a wide-area-network (WAN), as in **claim 1**; or that the WAN is the Internet (**claim 2**). The applicant has admitted that one of ordinary skill in the art recognizes that any LAN based system (such as Richard et al) may easily be modified to be WAN based system, the internet of which is the most common WAN and as such it would be obvious to one of ordinary skill in the art to modify the Richard et al system in this manner. The admission of such were made by applicant's failure to argue the old and well-known statements of the parent application 09/901797.

Regarding the newly added limitation (added in the amendment dated 12/17/2004) of "updating said test package at said test center with said first version of said test package if the second version of said test package is outdated relative to said first version of said test package and if said test center chooses to update to said first version of said test package", to **claim 1**, the examiner has addressed this

issue in the similar features of claim 8 and its rejection above. In the instance where a student has previously started a course using a specific version of a course, the server computer does not update to the newest version of the package. Instead the prior version of the software remains on the computer. The client computer decides whether the updating is appropriate or not. The Richard system further does not download the testing software if the modules already exist on the server. Further, the local server searches for currently installed files before beginning the search for other versions of the course. In this instance it is possible that a download is not necessary and the server would deny the updating to the new version.

3. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard et al (US 6162060) in view of Cook et al (US 2002/0168621 A1).

Richard et al teaches all aspects of the claimed invention as shown above except packaging said test package in one or more data structures according to a first protocol and sending said one or more data structures to said first test center via said wide-area networking using a transport protocol different from said first protocol (claim 10) where the transport protocol is Hypertext Transport Protocol (HTTP). Cook et al teaches how encryption algorithms function in paragraphs 136-138. It is the examiner's position that this functionality is the same as that described by claim 10. Cook et al teaches the use of HTTP in paragraph 12. It would have been obvious to one of ordinary skill in the art to modify the Richard et al system with the encryption algorithms of Cook et al so as to provide a more secure data transmission of the testing data.

#### ***Response to Arguments***

4. The rejections of claims 1-4 and 6-11 under 35 USC §101 and claim 4 under 35 USC §112, first and second paragraph, are withdrawn in view of the amendments made to the claims in the response dated 12/17/2004. Applicant further argues that the newly added limitation to claim 1 is not taught by the

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Richard et al system. The examiner has fully addressed this limitation in the rejection of the claims above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

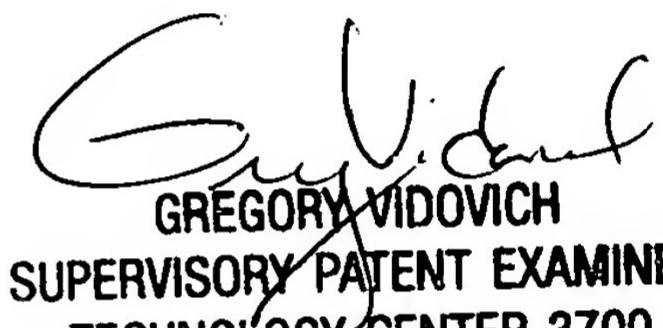
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M. Christman  
March 7, 2005



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SUPERVISORY PATENT EXAMINER  
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